

STATE OF MICHIGAN
COURT OF APPEALS

In re J.S., Minor.

UNPUBLISHED
November 17, 2015

No. 327405
Ottawa Circuit Court
Family Division
LC No. 13-075691-NA

Before: MARKEY, P.J., and OWENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

In this termination of parental rights case, respondent father appeals by right the trial court's order terminating his parental rights. Respondent does not contest the trial court's findings that clear and convincing evidence established two statutory grounds to terminate respondent's parental rights: MCL 712A.19(b)(3)(c)(i) and MCL 712A.19(b)(3)(g). The child at birth tested positive for opiates and marijuana. Both parents are multi-drug abusers with the usual problems that are associated with addictions, including maintaining sobriety despite participating in numerous treatment regimes, maintaining employment (although both parents were employed at the time of termination), and establishing and maintaining a safe, stable home environment in which to nurture a child. Very early in the case, the child, after being released from the hospital, was placed with her maternal step-grandmother, which the parties and the court regarded as a placement with a relative. We remand for consideration of how the child's relative placement affects her best interests.

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012); MCL 712A.19b(5). When considering the child's best interests, the focus is on the child rather than the parent. *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). The trial court must consider all available evidence to determine the child's best interests, *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000), and may consider such factors as "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home," *In re Olive/Metts*, 297 Mich App at 41-42 (citations omitted). Other factors that the trial court may consider include how long the child has lived in foster care or with relatives, the likelihood that the child could be returned to the parent's home within the foreseeable future, and compliance with the case service plan. *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012).

The preponderance of the evidence standard applies to the trial court's best-interests determination. *In re Moss*, 301 Mich App at 83. This Court reviews the trial court's decision regarding the child's best interests for clear error. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). A trial court's finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *Id.* An appellate court must accord deference to the "trial court's special opportunity to judge the credibility of the witnesses." *Id.*

Respondent does not contest the trial court's finding of statutory grounds for termination; he only challenges whether termination of his parental rights was in the best interests of the child. Specifically, the trial court found that the "conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age[.]" MCL 712A.19(b)(3)(g), and that respondent "without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." MCL 712A.19(b)(3)(c)(i). These findings, in turn, support the trial court's determination that it is in the best interests of the child to terminate respondent's parental rights. That is, it is in the best interests of the child to have a permanent, safe home with parents that are not constantly relapsing into drug addicted behavior. The record supports the trial court's finding that what the two-year-old child "needs most urgently is permanence," and "doesn't need this soap opera anymore" with parents that are always relapsing into drug use. Further, the record supports the court's finding that the child "need[s] a good home . . . needs a good home now and not another ride on the rollercoaster[.]" But for the trial court not explicitly addressing the child's placement with a relative as a fact weighing against termination, *In re Olive/Metts*, 297 Mich App at 43, we would conclude that the trial court did not clearly err by finding that "it's in [the child's] best interests to give her the permanency that she deserves and terminate parental rights." See *Id.* at 41-42; *In re HRC*, 286 Mich App at 459.

Respondent argues, and petitioner agrees, that the trial court clearly erred by not expressly addressing the child's placement with a relative as a fact weighing against termination of parental rights. See *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010), citing MCL 712A.19a(6)(a). We agree that the trial court clearly erred by not explicitly addressing the child's placement with a relative as a fact that "weighs against termination," *In re Mason*, 486 Mich at 164, and this "failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal." *In re Olive/Metts*, 297 Mich App at 43. Consequently, this Court must vacate the trial court's best-interests determination and remand for further proceedings consistent with this opinion. *Id.* at 44.

We remand for the court to consider how the child's relative placement affects her best-interest. The trial court shall file its supplemental best-interests determination with this Court within 42 days. We retain jurisdiction.

/s/ Jane E. Markey
/s/ Donald S. Owens
/s/ Amy Ronayne Krause

Court of Appeals, State of Michigan

ORDER

In re J.S., Minor

Docket No. 327405

LC No. 13-075691-NA

Jane E. Markey
Presiding Judge

Donald S. Owens

Amy Ronayne Krause
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 35 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded. As stated in the accompanying opinion, We remand for the court to consider how the child's relative placement affects her best-interest. The trial court shall file its supplemental best-interest determination with this Court within 42 days. The proceedings on remand are limited to this issue.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

NOV 17 2015

Date

Chief Clerk